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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/646,173	08/21/2003	Hrair Minassians		9106

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Jack C. Munro  
Suite 225  
28720 Roadside Drive  
Agoura Hills, CA 91301

EXAMINER

KRAMER, DEAN J

ART UNIT PAPER NUMBER

3652

DATE MAILED: 05/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/646,173

Applicant(s)

MINASSIANS, HRAIR

Examiner

Dean J. Kramer

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

1. Claim 11 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is unclear how claim 11 further limits claim 6 from which claim 11 ultimately depends.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1 and 6 are rejected under 35 U.S.C. 102b as being clearly anticipated by Johnson.
4. Claims 1 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Hobart.

Hobart shows a pet litter collecting device comprising a flexible bag (20) and at least one spatula (30) formed of flexible material "to conform to the surface on which the waste 4 rests" (see col. 4, lines 32 and 33).

5. Claims 1, 3, 6, and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Bagg.

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Bagg shows a waste collecting assembly that contains all of the structural elements as broadly as recited in the above claims including a spatula having a surface that is "roughened" with holes (121) thereby inherently facilitating the retention of certain sized litter over these holes.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 2, 4, 7, and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bagg in view of Carpol.

Carpol shows a litter collector having a pair of handles (26) capable of being tied together prior to disposing of the waste.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to replace the drawstring (140) of Bagg's device with a pair of integrally formed handle similar to that shown in Carpol's patent as an alternative yet functionally equivalent means of securing the open end of the bag in a closed condition once the waste has been collected therein. Regarding claims 4 and 9, it would have been an obvious matter of design choice to form the resulting spatula out of any well known and commonly available plastic material, such as foam, especially since applicant has not specifically disclosed that this particular material solves any stated problem or is for any critical purpose, and it appears that the device would perform

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equally well as long as the spatula was rigid enough to support the animal waste and flexible enough to conform to various surfaces.

8. Claims 5, 10, and 11, as understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Bagg in view of Carpol as applied to claims 2, 4, 7, and 9 above, and further in view of Larsson.

Larsson shows a pet litter collection device comprising a pair of spatulas each having scalloped gripping edges (8) for contacting the litter.

It would have been obvious to a person having ordinary skill in the art to provide the free end of the modified Bagg spatula, as was presented supra, with a scalloped edge similar to that shown in the Larsson patent so that litter could be more efficiently scooped from an uneven surface such as grass or dirt.

### ***Conclusion***


9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Campbell and Peck et al. both show scalloped edges on a waste collecting scoop member.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dean J. Kramer whose telephone number is (703) 308-2181. The examiner can normally be reached on Mon., Tues., Thurs., Fri. (7:00-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eileen Lillis can be reached on (703) 308-1113. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Dean J. Kramer 5/4/04  
Primary Examiner  
Art Unit 3652

djk  
5/4/04